IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6897 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHEDA DISTRICT PANCHAYAT - Petitioner
Versus
B.R.SHRIMALI - Respondent

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Appearance :
MR ND NANAVATI WITH MR NIRAD BUCH for Petitioner:
MR PRABHAKAR UPADYAY for Respondent:

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 03/10/2007

ORAL JUDGMENT

Heard learned counsels of the parties.

1. The petitioner Kheda District Panchayat has

impugned the order dated 3/8/1992 passed by the Gujarat Civil Services Tribunal in Appeal No.66 of 1992 setting aside the order dated 17/7/1991 passed by the petitioner removing the respondent w.e.f. 1/7/1987 on conclusion that the charges of unauthorised absent was proved against the respondent. The Tribunal issued direction to the District Panchayat for reinstating the respondent in service and pay him all the back wages. The liberty was reserved to the petitioner District Panchayat to initiate fresh inquiry in accordance with law as the Tribunal had recorded that the inquiry was proceeded without giving any subsistence allowance to the petitioner (respondent herein) or without suspending him and paying him any salary for the interregnum period. The order of the Tribunal dated 3/8/1992 is challenged in the present petition wherein this Court (Coram: N.B. Patel, J (as he then was,) as it is reflected in the memo of Civil Application No. 3801 of 2007, which is reproduced as under :-

“Rule. Notice as to interim relief returnable on 13/10/92. Ad-interim stay against that part of the order of the Tribunal by which the petitioner is directed to pay back wages to the respondent, till then it is clarified that there is no stay against initiating fresh inquiry as ordered by the tribunal nor against the direction to reinstate the respondent in

service. DS permitted. “

This order was passed on 29/9/1992. As per this order also the petitioner District Panchayat was at liberty to initiate fresh inquiry as ordered by the Tribunal. The stay was granted only against the order of payment of back wages to the respondent and it was in terms clarified that there was no stay against initiating fresh inquiry nor was there any stay against order of reinstatement passed by the Tribunal. The petitioner has not reinstated the respondent nor did it initiate any fresh inquiry in terms of the liberty reserved to it by the Tribunal as well as this Court. The petitioner has granted stay to itself against the reinstatement which was to say the least deprecated.

2. Shri. Nirad Buch, learned counsel appearing for the District Panchayat – the petitioner has submitted that the respondent had unauthorisedly remained absent for long period of 16 months and therefore the order of termination dated 17/7/1991 treating him to have been terminated w.e.f. 1/7/1987 was justified. The Tribunal has therefore patently erred in exercising its jurisdiction in allowing the appeal. Shri. Buch has fairly admitted that though there was no stay against the reinstatement, the District Panchayat – petitioner herein has not reinstated

the petitioner. As the matter was large before this Court the District Panchayat did not avail the liberty of initiating fresh inquiry against the respondent. Shri Buch has submitted that the omission on the part of the District Panchayat either in not reinstating the petitioner or not initiating fresh inquiry in itself may not be viewed as a factor rendering the misconduct of the petitioner to be insignificance at all. Shri Buch has submitted that learned Tribunal has not applied its mind on findings of the inquiry authority and that of disciplinary authority that the respondent / appellant before the Tribunal did not bother to supply his address. But Shri Buch could not stretch the matter any further and submitted that on equitable ground the petition deserves to be allowed as otherwise the misconduct is clearly proved. He submitted that the respondent can not be permitted to take advantage of the omission on the part of the petitioner. The petition therefore deserves to be allowed.

3. Shri. Upadhyay learned counsel appearing for the respondent under the instruction of his client has submitted that the respondent is not gainfully employed during the entire period. The respondent has therefore instructed him to submit to the Court that, in case this petition is dismissed then, he is willing to forego the amount of back wages as the respondent has

already attained the age of superannuation and now even if the petition is dismissed he would be not required to be reinstated as he has already crossed regular age of superannuation on 30/6/2006. However Shri. Upadhyay submitted that the respondent is prepared to even forego the back wages till the date of his superannuation had this petition been dismissed or had he been reinstated then he would have earned the wages till the date of his retirement as he was ordered to be reinstated which order had never been stayed by any Courts.

4. Shri Updhyay has specifically obtained instruction from the respondent who is present in the Court to state to the Court that, the respondent is absolutely willing and ready and is giving up his claim for back wages and only makes a request that let there be a direction to the petitioner to treat the respondent in service and accord him the benefit as if he was in service and retired on 30/6/2006 so that respondent may receive atleast the retiral dues i.e. gratuity and pensionary benefits. Shri Upadhyay submitted that so far as the merit is concerned it is established principle of law that the order of termination could not have been passed with retrospective effect. The high handedness of the authority is evident on the face of the record that the inquiry was sought to be conducted without even suspending the

petitioner. The petitioner's absence could not have been taken as abandoning the service nor is it the case of the respondent till his date of termination that he has abandoned the service. In fact the inquiry sought to have been conducted and the order of punishment of removal from service was passed by the disciplinary authority with retrospective effect in itself is bad.

5. This Court has heard learned counsels of the parties and noted the submissions of Mr. Upadhyay for the respondent giving up his claim for back wages in case the petition is dismissed. This petition is containing challenge to the order of the Tribunal wherein Tribunal has categorically recorded that the petitioner did not bother either to suspend the petitioner or recorded any finding to the effect that the petitioner abandoned the service. The respondent ought to have been placed under suspension and if he was not available to receive copy the established mode of service could have been resorted. In absence of any such exercise on the part of District Panchayat, petitioner's holding of inquiry can be said to be in futility and merely an eye wash. Order of the disciplinary authority dated 17/7/1991 did not contain any efforts for serving the respondent in any manner. The fact remains that the findings of the Tribunal therefore can not be said to be

erroneous from any angle. Juxtaposing this fact that the conduct of the present petitioner in not availing the liberty of initiating fresh inquiry deserves to be considered in its proper perspective. It was open to the petitioner Panchayat to initiate fresh inquiry in terms of the liberty reserved by the Tribunal as well as by this Court in its order dated 29/9/1992. The petitioner Panchayat did not reinstate the respondent. Therefore the Panchayat's conduct also deserves to be deprecated as the liberty given is not utilised. The Panchayat was expected to act like a model employer and a forthright litigant before the Court. The Panchayat has in its blatant disregard to the fundamental principles of law passed an order absolutely contrary to the principle of law and not availed the liberty of rectifying the mistake which stare in the face of the Panchayat till date. The Panchayat's conduct therefore can not in any manner deserves any leniency from any quarter. This Court shall not mince word in depreciating conduct of the Panchayat. This Court has no option but to dismiss the petition of the petitioner. However, in view of the concession made by the respondent this Court is inclined to pass following directions in the interest of justice.

6. Accordingly the petition is dismissed. However, with a clarification that the order of the

Tribunal is modified to the extent that now the respondent would not be eligible for back wages in terms of his concession. Respondent shall be eligible for continuity in service so as to treat him eligible for pensionary benefits. However no benefit of promotion. The respondent is to be treated as in service till he attained the age of superannuation. He will not be entitled to any other benefits, except that of gratuity and pension as if he had retired on the post of Malaria Survey Worker. With this modification this petition is dismissed. Rule discharged. Interim relief, if any granted earlier, shall stand vacated. No cost.

[S.R. BRAHMBHATT, J]

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